evaluation of facts and not on their perception. The question before us on this appeal is whether on the evidence, the trial judge's finding that Chua had Ah Bah's permission at the time of the accident was wrong.

The trial judge had accepted Chua's evidence as true. His evidence was not contradicted by other evidence nor was it materially shaken in cross-examination. As stated earlier the evidence is that Chua had on two previous occasions similarly deviated from the normal route from his workshop to Ah Bah's premises without Ah Bah expressing disapproval of such user of the car. Ah Bah had not on the day in question expressly prohibited Chua from using the car, the control of which he parted to Chua, for Chua's private purposes.

It seems to me on these facts the trial judge was correct in the view he took that Chua at the time of the accident was driving the car with the permission of Ah Bah.

On the facts and circumstances of this particular case, where the insured in parting with the control of the car without any definite prohibition as to the nature of its use to a person, who thereupon uses it for a purpose for which he had used it on previous occasions with the insured's knowledge and without the insured's expressed disapproval, it seems to me that the insured must be held to have given permission to that person to use the car for the purpose for which it had been used on previous occasions.

I would dismiss the appeal with costs.

Tan Ah Tah F.J.: I agree.

Appeal dismissed.

Solicitors: *Lee & Lee; Battenberg & Talma.*

ONG LOCK MUI v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Ong Hock Thye F.J.) February 14, 1966]

[J.B. — Federal Court Criminal Reference No. X 1 of 1965]

Income Tax — Notice to furnish information — Whether necessary to specify purpose — Income Tax Ordinance, 1947, ss. 60, 61B(2) and 90.

Income Tax — Assessment of income — Taxpayer's liability to tax.

The taxpayer was charged for failure to comply with a notice under section 61B(2) of the Income Tax Ordinance issued by the comptroller requiring information to be furnished to the comptroller. The learned magistrate acquitted the accused as he held that the notice was bad as it did not specify the purpose for which the information was required. On appeal by the Inland Revenue Department, Suffian J. held that where the comptroller acted under section 61B(2) of the Ordinance, it was unnecessary for him to specify the purposes for which the information was required, provided it was clear, as it was in this case, that the information required was required for the purposes of the Ordinance. The learned judge was of the opinion, however, that his view involved a point of law of some importance and reserved accordingly that point for the consideration of the Federal Court.

Held: the notice as was framed was a good notice under section 61B(2) and there was before the magistrate a *prima facie* case that such a notice had been served on the taxpayer and that it had not been complied with.

Observations on taxpayer's potential liability to tax.

FEDERAL COURT.

Appellant (respondent in the court below) in person.

Au Ah Wah (Senior Federal Counsel) for the respondent (appellant in the court below).

In the court below the following grounds of judgment were given:

Suffian J.: I allowed this appeal and now give my reasons.

The respondent was charged as follows:

"That you, Ong Lock Mui of 79, First Floor, Jalan Ibrahim, Johore Bahru, an advocate and solicitor of Messrs L. M. Ong, being required by a notice in writing under section 61B(2) dated 8th October, 1964, by the Pengawal Chukai Pendapatan, States of Malaya, to furnish him within the stated period of thirty days from 8th October, 1964, with the particulars asked for in the said notice in respect of his business income failed without reasonable excuse to furnish such particulars within the stated period of thirty days as required thereby committing an offence under section 90(1) and punishable under section 90(2) of the Income Tax Ordinance No. 48 of 1947 (as amended)."

The prosecution proved service on 8th October, 1964, on the respondent of a notice exhibit P1 in the following terms:

"NOTICE UNDER SECTION 61B(2) OF THE INCOME TAX ORDINANCE, No. 48 OF 1947

NOTICE is hereby given under section 61B(2) of the Income Tax Ordinance, No. 48 of 1947, to furnish within thirty (30) days from the date of service of this notice, the following particulars:—

Forward a signed statement of all your assets and liabilities (both business and private) including those of your wife and children as at 31st December, 1963. The statement should include, *inter alia*, cash in bank and in hand, houses, cars, vacant lands, jewellery radiograms, television set, loans, advances, Post Office Savings Bank balance, other savings accounts, fixed deposit, balances of current account (if any), etc. The value of all assets should be shown at cost price.

Failure to comply with this notice constitutes an offence under the said Ordinance for which penalties are provided under section 90.

TAKE NOTICE that unless the above particulars are furnished and received by me within the period stated above, you may be prosecuted without further warning, and on conviction will be liable to a fine not exceeding $1,000 and in default of payment to imprisonment for a term not exceeding six (6) months.

YOU ARE WARNED that failure to furnish all or part of the particulars stated above will render you liable to prosecution.

In order to ensure safe delivery to this office, you should either deliver the particulars personally to this

office and obtain an acknowledgment or transmit them by registered post."

Service was not contested.

The respondent failed to supply the information required.

By cross-examination the respondent obtained an admission from the Assistant Comptroller of Income Tax, Johore Bahru, that an assessment had been made of the respondent's income tax for the year 1964, the respondent did not object and the respondent paid the tax due.

There was also proof that the respondent paid the last amount under the assessment on 16th October, 1964, that is 8 days after the service on the respondent of the notice, P.1., and that this payment was a penalty in respect of an outstanding amount.

At the end of the prosecution case it was submitted on behalf of the respondent that section 61B(2) of the Income Tax Ordinance, No. 48 of 1947, under which the notice was sent, empowers the comptroller (which by section 2 includes an assistant comptroller) to require any person to give orally or in writing all such information concerning his or any other person's income or assets or liabilities as may be demanded of him by the comptroller "for the purposes of this Ordinance". The respondent argued that this meant that the purposes for which the information was required must be specified in the notice P1, it was not so specified, and therefore the notice was bad. Agreeing with this submission the learned magistrate acquitted and discharged the respondent without calling on him for his defence. The magistrate said. "As I see it the purposes may be many and varied but they must be valid and proper purposes under the Ordinance not what the comptroller thinks to be valid and proper purposes. He cannot be the judge of his own cause.....section 61B(2) generates the power to call for information, it does not *ipso facto* set out the purpose for which the information was required."

The Public Prosecutor appealed on the grounds that:

"(a) the learned magistrate misdirected himself in discharging and acquitting the respondent without calling for his defence. The learned magistrate should have held that a *prima facie* case has been made out against the respondent and the learned magistrate should have called upon the respondent for his defence;

(b) the learned magistrate erred in holding that the notice Exhibit P1 was bad. The learned magistrate should have held that the notice Exhibit P1 was a good and valid notice under section 61B(2) of the Income Tax Ordinance, 1947."

Opposing the appeal, the respondent repeated the arguments in the lower court and stated from the Bar that he received a notice under section 59(1) from the comptroller requiring him to furnish him with a return of income, he furnished the required return, the comptroller assessed him presumbly under section 68(1) with income tax, the respondent did not objecct to the assessment, whereupon it was submitted that the assessment became final and thereafter the comptroller had no power to ask for further particulars.

I was of the opinion that this made no difference. Either before or after payment of tax by the respondent the comptroller may call for further returns under section 60 or may require the respondent to give information concerning his or any other person's income or assets or liabilities under section 61B(2). If the comptroller acts under the second provision it is unnecessary for any notice sent by him to the respondent to state or specify the purposes for which the information was required, provided it is clear, as here, that the information required was required for the purposes of the Ordinance. The notice exhibit P1 is headed:—

"NOTICE UNDER SECTION 61B(2) OF THE INCOME TAX ORDINANCE, No. 48 of 1947"

It is self-evident that the information required was in connection with the Income Tax Ordinance, and in my judgment the notice was a good and valid notice. It is plain that the information sought is required to enable the comptroller to check the respondent's past and future returns.

I, therefore, set aside the order of acquittal and discharge and remitted this case to the lower court for the learned magistrate to call on the respondent for his defence.

As in the opinion of the learned judge the case involved an important point of law, reference was made under section 66 of the Courts of Judicature Act, 1964, for the consideration of the Federal Court, which consisted of Thomson L.P., Barakbah C.J. (Malaya) and Ong Hock Thye F.J.

Thomson L.P. (delivering oral judgment): We are concerned here with a question which has been referred to us under the provisions of section 66 of the Courts of Judicature Act, 1964. It is a question involving the interpretation of section 61B(2) of the Income Tax Ordinance which reads as follows:—

"The Comptroller may require any person to give orally or in writing, as may be required, all such information concerning his or any other person's income or assets or liabilities as may be demanded of him by the Comptroller for the purposes of this Ordinance:

Provided that no person shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy."

The facts of the case are as follows.

During 1964 the taxpayer was assessed to 1964 income tax, which of course was based on his actual income for 1963. This assessment was not appealed against. Some time after the assessment was made, and indeed when the tax had been paid with the exception of something

still due by way of penalty, the Comptroller of Income Tax acting under section 61B(2) of the Ordinance issued a notice, dated 8th October, 1964, and served it on the taxpayer by registered post some days later. That notice was headed: "INLAND REVENUE DEPARTMENT — NOTICE UNDER SECTION 61B(2) OF THE INCOME TAX ORDINANCE". It went on: "NOTICE is hereby given under section 61B(2) of the Income Tax Ordinance.... to furnish within thirty (30) days from the date of service of this notice, the following particulars:—". The particulars asked for are a signed statement of all the assets and liabilities of the taxpayer as at 31st December, 1963. The nature of this is particularised in some detail but it is unnecessary to set it out here.

The taxpayer, taking the view (no doubt perfectly *bona fide*) that this action on the part of the Comptroller was not justified, did not comply with the notice and in due course was prosecuted for his failure to comply with it under section 90(2) of the Ordinance, which is a general penalty section providing for penalties of fine not exceeding $1,000 or in default six months imprisonment.

The magistrate dismissed the summons without calling on the taxpayer to make his defence on the ground that the notice had not sufficiently stated the purposes for which the information was required. He has stated his views in a judgment which shows most praiseworthy care in consideration and clarity of expression.

Against that decision the Inland Revenue Department appealed and in the event Suffian J. took the view that the demand contained in the notice was one which the Comptroller had power to issue under section 61B(2) and with which the taxpayer was therefore bound to comply. He accordingly set aside the order of acquittal and discharge and remitted the case to the magistrate's court for the magistrate to call upon the respondent to make his defence. He was of the opinion, however, that his view involved a point of law of some importance and reserved accordingly that point for the consideration of this court.

In our view the case is very clear. There is no need to embark on an elaborate discussion of the law relating to income tax but it is to be observed that assessment of income tax for a particular year does not exhaust the taxpayer's potential liability to tax. In a sense, of course, the assessment is final because if the taxpayer does not object to it successfully it stands and the taxpayer is liable in accordance with it and so far as relates to the income in respect of which it is made it is final. But it is not final in the sense of exhausting the taxpayer's tax liability for any particular year by reason of the statutory power which the Inland Revenue Department possesses of raising additional assessments upon the taxpayer. From that it clearly follows that for the purpose of considering whether it is necessary to raise an additional assessment the Inland Revenue are entitled to exercise all the powers of investigation which the tax law gives them. And in particular they are entitled to exercise the powers given to them by the section with which we are concerned here, that is section 61B(2).

That, however, does not conclude the matter because it has been said, and this was certainly what the magistrate had in mind, although it does not appear to have carried much weight with the judge, that any notice under section 61B(2) must set out with greater particularity than was done in the present case the purposes for which information is required.

The section itself says that information may be demanded "for the purposes of this Ordinance" and in our view that requirement was complied with by the notice as it stood. In the first place, it is headed: "INCOME TAX ORDINANCE. SECTION 61B(2)". Then it reads: "NOTICE is hereby given under section 61B(2) ....to furnish....the following particulars." That, to our mind, is tantamount to saying: "You are required to furnish these particulars under the provisions of that section, that is to say you are required to furnish them for the purposes of the Income Tax Ordinance". And there is nothing to contradict that in the detailed statement of the particulars required because they are all questions that in one way or another can affect the taxpayer's liability the settling of which is one of the purposes of the Ordinance.

In the circumstances, then, we are bound to say that in our view the notice as framed was a good notice under section 61B(2) and there was before the magistrate a *prima facie* case that such a notice has been served on the taxpayer and that it had not been complied with.

We are, therefore, compelled to make the same order as the judge made, that is to remit the matter for the magistrate to hear the defence, if any, and to deal with the matter according to law.

Order accordingly.

RE TAN CHWEE BOON, DECD.; YAP SUAT TEE & ORS. v. CHERIE SEE CHENG CHOO

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Chua J.) February 10, 1966]

[Singapore — Federal Court Civil Appeal No. Y 3 of 1965]

Probate and Administration Ordinance, (Cap. 17) ss. 18, 19, 21 and 22 — Application by widow and children